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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION
AT RICHMOND, DECEMBER 19, 2002

PETITION OF

UNITED TELEPHONE-SOUTHEAST, INC. CASE NO. PUC-2002-00231

For Declaratory Judgment
Interpreting Various Sections of
the Code of Virginia, For
Injunction Prohibiting the City of
Bristol from Providing
Telecommunications Services in
Violation of State Law and for
Other Relief

ORDER

On November 26, 2002, in Case No. PUC-2002-00126, the State Corporation Commission ("Commission") granted a certificate of public convenience and necessity ("Certificate") to the City of Bristol d/b/a Bristol Virginia Utilities Board ("Bristol") to provide local exchange telecommunications services in the cities of Bristol and Norton and the counties of Washington, Scott, Lee, Wise, Russell, Tazewell, Smyth, and Grayson.¹ The Order Granting Certificate required Bristol to provide tariffs to the Commission's Division of Communications that conform to all

¹ Application of the City of Bristol, For a certificate of public convenience and necessity to provide local exchange telecommunications services and for interim operating authority, Case No. PUC-2002-00126, Order Granting Certificate (Nov. 26, 2002) ("Order Granting Certificate").

applicable rules and regulations before it begins offering local exchange telecommunications services.

On November 27, 2002, Bristol submitted its initial Local Exchange Services tariff, VA Tariff SCC No. 1, to the Commission's Division of Communications and to the Clerk of the Commission. The Order Granting Certificate provided that, absent subsequent order of the Commission, such tariff may become effective a minimum of 30 days after being submitted to the Commission's Division of Communications. Bristol requested an effective date of December 27, 2002, for its tariff. As required by the Order Granting Certificate, Bristol also served a copy of its tariff upon the service list for Case No. PUC-2002-00126.

On December 12, 2002, United Telephone-Southeast, Inc. ("Sprint"), filed a petition "as a request for declaratory judgment, as a formal complaint against [Bristol] and as a request for injunctive relief" ("Petition"). Petition at 1. Sprint states that it is an incumbent local exchange carrier that provides telecommunications services in the same areas Bristol asks to serve.

Sprint requests that: (1) its complaint against Bristol be upheld; (2) the Commission determine that Bristol has failed to comply with Virginia law and that Bristol be required to come into compliance with applicable law; (3) the

Commission specifically declare that Bristol is in violation of §§ 15.2-2160 A and D, 56-241.1, and 56-265.4:4 of the Code of Virginia ("Code"); (4) the Commission issue an injunction against Bristol prohibiting it from providing telecommunications services to the public until it has complied with the conditions set forth in Virginia law regarding the offering of telecommunications services by electric municipalities; (5) Bristol's proposed tariff be rejected, or in the alternative, suspended by the Commission until the tariff is compliant; and (6) the Commission grant such other relief as is just and proper. Petition at 9.

Sprint asserts that § 56-241.1 of the Code requires Bristol to offer a stand-alone flat rate for residential and business local exchange service and that Bristol's proposed tariff fails to include such a rate. Sprint also contends that Bristol has not established a retail price for local exchange service and that, as a result, no determination can be made that Bristol's charges for telecommunications services do not include subsidies prohibited by § 56-265.4:4 B 4 of the Code. Sprint further states that Bristol has failed to provide any cost study establishing its costs for telecommunications services and that, as a result, it is impossible to determine whether Bristol's rates include subsidies.

Sprint's Petition includes exhibits allegedly demonstrating that Bristol, in violation of Virginia law, is not properly allocating or imputing costs associated with the provisioning of telecommunications services. Sprint also asserts, among other things, that Bristol's failure to reflect shared costs appears contrary to Commission precedent in prior proceedings involving the determination of subsidies.

On December 18, 2002, Bristol filed a response to the Petition ("Response"). Bristol denies the allegations contained in the Petition. Response at 1. Bristol requests that the Commission permit Bristol: (1) to begin service on or before December 27, 2002, under the tariffs it has supplied to the Commission except as modified upon request of Commission Staff; or, in the alternative, (2) to begin service under interim tariffs subject to refund. Response at 20.

Bristol asserts, among other things, that the issue presented by Sprint is not ripe for consideration by the Commission. Bristol further contends that an injunction is not appropriate, that Sprint's likelihood of irreparable harm is not likely and is not alleged in its Petition, that the likelihood of irreparable harm to Bristol is great, that Sprint is not likely to succeed on the merits, and that the public interest will be served if the injunction is denied. Bristol states that it has worked with Staff to develop a cost

allocation manual and attaches a cost allocation manual to its Response. Bristol also asserts that its proposed rates comply with the statutory subsidy tests.

In addition, Bristol explains that it "is even willing to initially offer the same basic local service rate for single telephone service for either residential or business customers as Sprint is offering, which may result in an increase to [Bristol's] proposed base rates in order to permit [Bristol] to start serving the public under interim tariffs." Petition at 16. Bristol asserts that "[s]ince interim rates can be implemented, subject to appropriate refund, the public would not be harmed; likewise, Sprint should not be harmed because the rates for basic local telephone service as between [Bristol] and Sprint would be identical until the rates are made permanent." Petition at 16.

NOW UPON CONSIDERATION of the Petition, the Response, and the applicable law, the Commission finds as follows. We will not order an injunction or suspend Bristol's existing tariff. Rather, we reject Bristol's existing tariff and require Bristol to forthwith submit a revised tariff. On or before December 26, 2002, Bristol shall provide to the Commission's Division of Communications tariff revisions that offer stand-alone basic local exchange service for residential and business customers. Bristol's rates for basic local exchange

service in its tariff, provided stand-alone or as part of a bundled offer, shall be the same rates charged by Sprint. Bristol's revised tariff shall have an effective date of December 27, 2002, and shall be deemed interim and subject to adjustment. Bristol shall contemporaneously file in this Case No. PUC-2002-00231, and serve upon the service list in this matter, a copy of such tariff.

We assign this matter to a Hearing Examiner pursuant to Rule 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure. The Hearing Examiner shall establish a procedural schedule, hold further proceedings, and issue a report and recommendation to the Commission on the legal and factual issues raised in this matter. The Commission Staff is directed to participate in this case to the same extent as permitted by Rule 5 VAC 5-20-80 D of the Commission's Rules of Practice and Procedure. Finally, on or before January 31, 2003, Bristol shall file in this proceeding cost studies to support the prices for its basic local exchange service.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Sprint's request for injunctive relief is denied.
- (2) Bristol's tariff submitted on November 27, 2002, is rejected.
- (3) On or before December 26, 2002, Bristol shall provide to the Commission's Division of Communications tariff

revisions that offer stand-alone basic local exchange service for residential and business customers. Bristol's rates for basic local exchange service in its tariff, provided stand-alone or as part of a bundled offer, shall be the same rates charged by Sprint. Bristol's revised tariff shall have an effective date of December 27, 2002, and shall be deemed interim and subject to adjustment. Bristol shall contemporaneously file in this Case No. PUC-2002-00231, and serve upon the service list in this matter, a copy of such tariff.

(4) This matter is assigned to a Hearing Examiner pursuant to Rule 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure. The Hearing Examiner shall establish a procedural schedule, hold further proceedings, and issue a report and recommendation to the Commission on the legal and factual issues raised in this matter.

(5) The Commission Staff is directed to participate in this case to the same extent as permitted by Rule 5 VAC 5-20-80 D of the Commission's Rules of Practice and Procedure.

(6) On or before January 31, 2003, Bristol shall file in this proceeding cost studies to support the prices for its basic local exchange service.

(7) This case is continued pending further order of the Commission.